

(2007) 06 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 8250 of 2006

Sri B.P. Kotregowda

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-06-2007

Acts Referred:

Citation : (2007) ILR (Kar) 3184 : (2007) 4 KCCR 244 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : M.S. Bhagwat, for the Appellant; H.T. Narendra Prasad, HCGP for R.1, K.A. Chandrashehar Advocate for R.2 and 3 and B.S. Hadimani Advocate for R4, for the Respondent

Judgement

N.K. Patil, J.—Though this matter is posted today for consideration of I.A. No. I of 2007 filed by respondents-2 and 3, the matter is taken up for final disposal, with the consent of learned Counsel appearing for both the parties.

2. in the instant case, petitioner is assailing the correctness of the impugned order dated 12.6.2006, passed by first respondent vide Annexure-A and order dated 23.6.2006 passed by 3rd respondent vide Annexure-G.

3. The grievance of the petitioner in this writ petition is that, he is working as Depot Manager in the 2nd respondent-Corporation and he has been transferred on 26.10.2005 vide Annexure-B as Depot Manager to Bommanahally. But he could not take the charge of the said Depot due to non co-operation of the officials of the department and on persuasion of the 4th respondent The said order has been given effect to only on 22/23.3.2006 office order issued by District Manager of the 2nd respondent-Corporation and accordingly, petitioner has taken the charge of Bommanahalli depot on 1.4.2006. It is shock and surprise to the petitioner when he has received one more impugned order dated 23.6.2006 vide Annexure-G transferring him to Madivala Depot within a span of two months. Therefore, petitioner was constrained to approach this Court by filing this writ petition, assailing the correctness of the impugned order vide Annexure-A and

after obtaining an interim order he is discharging his duty as Depot Manager in Bommanahalli Depot. Be that as it may, during the pendency of this writ petition, petitioner has filed an application for amendment by assailing the correctness of impugned Annexure-G. Having regard to these backgrounds, petitioner has presented this writ petition seeking appropriate relief as stated supra.

4. The principal submission canvassed by learned Counsel appearing for petitioner at the outset is, the impugned orders passed by respondents-1 and 3 vide Annexure-A and G as referred above are liable to be set aside. To substantiate his submission, he has taken me through Annexure-A and submitted that, at the behest of the Member of Legislative Assembly who has sent instruction to change the petitioner from Bommanahalli Depot and on the basis of the said recommendation-cum-communication respondents have taken a decision to transfer the petitioner within a span of two months. Further learned Counsel appearing for petitioner has submitted that, the authorities should not have taken into consideration the communication sent by Member of Legislative Assembly and transferred the petitioner to another place. To substantiate his submission he placed reliance on the judgment of the Apex Court reported in : (2003)11SCC740 (Sarvesh Kumar Awasthi v. U.P. Jal Nigam and Ors.) wherein it is held that, transfers could not be given effect to on the basis of political pressure and therefore, he submitted that the impugned order Annexure-A cannot be sustained and the consequential order vide Annexure-G is also not within the jurisdiction and they are liable to be set aside.

5. Per contra, learned Counsel appearing for respondents-2 and 3, inter-alia, contended and at the outset submitted that, the prayers sought by the petitioner do not survive for consideration and they are liable to be dismissed as having become infructuous. To substantiate his submission, he placed reliance on the guidelines issued by the Managing Director of the 2nd respondent-Corporation regarding transfer vide Annexure-E dated 7.4.2006 and specifically pointed out that as per amended Circular, Officials/Managers can be posted to depot for a period of one year and in the instant case, by virtue of an interim order granted by this Court, petitioner has continued in the same place for more than one year i.e. since 1.4.2006 till as on date. Further he submitted that after the expiry of one year's period, the competent authority of the 2nd respondent-Corporation, District Manager (South) has transferred other officers who have been mentioned in Annexure-B by order dated 4.4.2007. Therefore, he submitted that the writ petition filed by petitioner is liable to be dismissed as having become infructuous.

6. I have heard learned Counsel appearing for petitioner, learned Counsel appearing for respondents and learned Government Pleader for first respondent.

7. After careful perusal of the materials available on record and after considering the rival submissions made by learned Counsel appearing for both the parties, it emerge that, petitioner has been transferred to Bommanahalli Depot on 26.10.2005 and the said order could not be given effect to and the same has been implemented only on 22/23.2.2006 vide Annexure-C and accordingly,

petitioner has reported to duty on 1.4.2006 and as per the guidelines issued by the competent authority of the 2nd respondent-Corporation vide Annexure-E, the tenure of one year has been fixed for Depot Manager. If the same is taken into consideration, one year's period of the petitioner in the said place has expired on 1.4.2007 itself and by virtue of the interim order granted by this Court, he has been continued till as on date in that place. Therefore, as rightly pointed out by learned Counsel appearing for respondents-2 and 3, prayers sought for by petitioner do not survive for consideration. Further, it is significant to note that, after expiry of one year's period, the District Manager-South, the competent authority of the 2nd respondent-Corporation has taken the decision to transfer the persons mentioned in Annexure-B, except petitioner and 4th respondent by its order dated 4.4.2007. If the said subsequent event is taken into consideration, the competent authority has taken the decision as per the Circular dated 7.4.2006 vide Annexure-E. Therefore, I do not find any justification or good grounds to entertain this writ petition on the ground that, prayers sought for by the petitioner do not survive for consideration. The said transfer has been made only in the interest of Corporation in particular and public in general. The petitioner cannot claim as a matter of right to continue in the same place and in particular depot as per his whims and fancies. Therefore, writ petition filed by petitioner is liable to be dismissed as mis conceived.

8. So far as the reliance placed by learned Counsel appearing for petitioner on the decision of the Apex Court reported in : (2003)11SCC740 (Sarvesh Kumar Awasthi v. U.P. Jal Nigam and Ors.) is concerned, there is no quarrel regarding the well settled principles of law laid down by the Apex Court in the aforesaid decision that, the transfer should not be given effect to on the basis of the political basis. But the said principles of law cannot be made applicable to the facts and circumstances of the case in hand as rightly pointed out by learned Counsel appearing for respondent No. 4. As per circular issued by the 2nd respondent-Corporation dated 7.4.2008 vide Annexure-E the period mentioned therein is for one year and which has been based upon the cadre of officers. It has been specifically pointed out in Clause 3, Sub-clause 1 and 2 that, upto Rupees two Crores the cadre of petitioner can be appointed and so far as Bommanahalli Depot is concerned it is more than five Crores and on the basis of that, the Member of Legislative Assembly has sent a communication to the Government to take up the matter for consideration. The Government has taken up the same and issued directions to the concerned authority of the 2nd respondent who in turn, after realizing the mistake has taken the decision strictly in accordance with the guidelines/circular vide Annexure-E as referred above and issued official order dated 23.6.2006 vide Annexure-G. Therefore, I do not find any error or illegality in the same.

9. Having regard to the facts and circumstances of the case as stated above and taking into consideration the totality of the case in hand, the writ petition filed by petitioner is liable to be disposed of as having become infructuous. Ordered accordingly.